Supreme Court, U.S.
FILED
MAR 2 7 1995
OFFICE OF THE CLERK

No. 94-1379

In The

Supreme Court of the United States

October Term, 1994

JOSEPH R. MATTIOLI, ROSE MATTIOLI and THE POCONO INTERNATIONAL RACEWAY, INC.,

Petitioners,

v.

TUNKHANNOCK TOWNSHIP, TUNKHANNOCK TOWNSHIP RESIDENTS COMMITTEE, CHARLOTTE DAVENPORT, JAMES G. DAVENPORT AND JAMES R. DAVENPORT and THE CORTRIGHT ROAD RESIDENTS,

Respondents.

Petition For A Writ Of Certiorari To The Commonwealth Court Of Pennsylvania

PETITIONERS' REPLY BRIEF

RICHARD DISALLE
(Counsel of Record)
FRANCIS J. DISALLE
DIANNE S. WAINWRIGHT
ROSE, SCHMIDT, HASLEY & DISALLE, P.C.
900 Oliver Building
Pittsburgh, PA 15222-2310
(412) 434-8600

Attorneys for Petitioners

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OR CALL COLLECT (402) 342-2831

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PETITIONERS' REPLY BRIEF

Respondent Tunkhannock Township's characterization of the findings and conclusions of the trial court is inaccurate in several significant respects.

First of all, Respondents argue that the Petition for Incorporation had "several defects." (Brief in Opposition, p. 4). Neither the trial court nor the advisory committee found any defects in the Petition.

At page 5 of its Brief in Opposition, in discussing the impact of incorporation on certain Township residents, the Township argues that: "The lower courts' [sic] properly found that the creation of such a peninsula of Tunkhannock Township residents would have an adverse effect on Tunkhannock Township, as well as those residents" and states that the court had rejected the Petitioners' argument that "there was no adverse effect on those isolated Tunkhannock Township residents." To the contrary, the trial court said:

> The entire Committee concluded that the geographic integrity as it relates to the Cortright Road residents (sometimes referred to as the "dirt road residents") is not a negative factor presently, would not present any problems and the situation would remain unchanged. (Committee Report, pg. 52).
>
> Additionally, a majority of the Committee concluded that the geographic integrity of the area for the proposed borough is suitable for incorporation, that the incorporation would not burden the surrounding townships and that the proposed uses for the borough would not be inconsistent with the surrounding townships.

> (Committee Report, pg. 40). *The Court finds that the proposed borough has geographic integrity in that it is contiguous and does not form an isolated island within the Township.* (App. 47, 48) (emphasis added.)

At page 10 of its brief, the Township states: "Clearly, the financial impact on Tunkhannock Township provided sufficient basis for the lower courts to deny the petition." With respect to this issue, the trial court said " . . . we adopt the majority's finding that the Raceway's proposed incorporation would have a minimal impact on the tax revenue of the Township providing that the Township would realign its tax structure." (App. 45).

Finally, and most significantly, the Respondent states that the trial judge found that the proposed borough "was *not* one harmonious whole with common interests and problems best served by borough government" (p. 8, Brief in Opposition) (emphasis added). This statement flatly contradicts the specific finding of the trial court on this issue. In fact, the Judge stated:

> Based on the foregoing, we adopt the conclusion of the entire Committee that the Petitioners *have clearly established* that the proposed borough is a harmonious whole with common interests and needs that can best be served by a borough government. (Committee Report, pg. 52).

(App. 46) (emphasis added).

President Judge James A. Marsh of the Court of Common Pleas of Monroe County made it painfully clear in his opinion of December 23, 1993, that his *only* reason for the denial of the Petition for Incorporation was the fact that the Petitioners were members of the Mattioli family:

> . . . As we expect that this decision will be appealed, we have attempted to narrow the issue involved so that the appeal may succeed or fail based on *the true issue* in this case.
>
> The same power that this Court is reluctant to give to *a small family* has been exercised by a small elected group within the Township. However, within the Township the residents may have their remedy at the polls.

(App. 50-51).

* * *

> In the present case, the Petitioners are Pocono International Raceway (which is owned and operated by the Mattioli family), Joseph R. Mattioli and Rose Mattioli. Additionally, most of the residents of the proposed borough are members of the Mattioli family. This incorporation, if approved, would give one family complete governmental control. The family would have control of all the governmental powers, including physical, economic and political. Also, the family would regulate police conduct and could choose whether or not to investigate different situations. *This concentration of political power among a small family group has great potential for misconduct.* This is a greater concern when you consider the large number of people who are present within the borough as visitors once or twice a year. The proposed borough casts shadows of an old company town in modern dress.

(App. 50) (emphasis added).

For this reason, and this reason alone, he denied the Incorporation Petition, despite his finding that all of the

legal requirements (both statutory and case law) for the incorporation of a borough had been met. As noted in the Petition for Writ of Certiorari, no decisional or statutory law in Pennsylvania has ever denied incorporation based upon the family relationship of the incorporators.

The trial court's perverse view of the role of this family vis-a-vis its place in government has no legitimacy in a constitutional democracy dedicated to principles of equal protection and due process. Its decision should not be permitted to stand.

Petitioners respectfully request that their Petition for Writ of Certiorari be granted.

Respectfully submitted,

RICHARD DISALLE
(Counsel of Record)
FRANCIS J. DISALLE
DIANNE S. WAINWRIGHT
ROSE, SCHMIDT, HASLEY &
DISALLE, P.C.
900 Oliver Building
Pittsburgh, PA 15222-2310
(412) 434-8600

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